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DA 97-1468

DISPATCHED BY Before the Federal Communications Commission Washington, D.C. 20554

In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Arcadia and Fort Meade, Florida) MM Docket No. 97-159 RM-9122

NOTICE OF PROPOSED RULE MAKING

Adopted: July 9, 1997 Released: July 18, 1997

Comment Date: September 8, 1997 Reply Date: September 23, 1997

By the Chief, Allocations Branch

1. Before the Commission for consideration is a petition for rule making filed by Hall Communications, Inc. ("Hall"), licensee of Station WWRZ, Channel 252C2, Arcadia, Florida. Hall requests the reallocation of Channel 252C2 from Arcadia, Florida, to Fort Meade, Florida, and modification of the license for Station WWRZ accordingly. Hall states that it will apply for Channel 252C2 if it is reallocated to Fort Meade.

2. Hall seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules, which permit the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Modification"), 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). In support of its proposal, Hall contends that adoption of its proposal will result in a preferential arrangement of allotments by providing Fort Meade with its first local aural transmission service without depriving Arcadia of its sole local broadcast service. Station WKGF(AM) is licensed to Arcadia with the community continuing to receive at least seven full-time reception services. Further, Hall advises that although the 1990 Census credits Arcadia with a larger population

1 The license for Station WWRZ, Channel 252A, was amended to specify operation on Channel 252C2 pursuant to the Report and Order in MM Docket 92-159, 8 FCC Rcd 4735.

2 Station WKGF(AM) is licensed to Hall Communications, Inc.

(6,488 people) than Fort Meade (4,976 people), the University of Florida, in October 1996, revised the population figure to 5,455 people for Fort Meade and the Fort Meade Chamber of Commerce has published a report reflecting a year-round population of 6,316 people with a peak season population of 8,578 people. Hall points out that the proposed reallocation would result in an overall gain of service for approximately 405,536 people by moving Station WWRZ to Fort Meade, and that 565,245 people would be served by Station WWRZ's 60 dBu contour operating from the Fort Meade reference site as opposed to the current 159,709 people served by Station WWRZ operating from the current Arcadia site. Hall acknowledges that relocation of its transmitter site will create a gain and loss area but no white or gray areas will be created by the rulemaking proposal. According to Hall, the loss area will receive a minimum of seven broadcast services and the gain area will be served by a minimum of five services with some areas receiving more than five services. Hall addresses the Commission's concerns about reallocating stations into or close to urbanized areas stating that the WWRZ 70 dBu contour will cover 17.3% of the Lakeland urbanized area and 18.4% of the Winter Haven urbanized area, well below the 50% coverage benchmark which the Commission uses to evaluate whether a station is servicing an urbanized area. With regard to community indicia, Hall states that Fort Meade is an identifiable independent community, deserving of an FM allotment. According to Hall, Fort Meade is governed by a mayor and board of commissioners, has its own police department and operates its own water, sewage and natural gas systems. Fort Meade has its own post office and zip code, four public schools and a public library and the city maintains eight major parks and has over twenty churches. Hall indicates that Fort Meade has an American Legion Auxiliary and Post, the Fort Meade Chamber of Commerce, Lions Club, Rotary Club, several Women's Clubs, the Fort Meade Garden Club and a Veterans of Foreign Wars Chapter.

3. We believe Hall's proposal warrants consideration since the reallocation of Channel 252C2 from Arcadia to Fort Meade could provide Fort Meade with its first local aural transmission service and enable Station WWRZ to expand its service area. Hall does state its intention to relocate its transmitter site to accommodate its proposal which will result in areas that lose existing reception service. Hall has provided information concerning reception services in both the gain and loss areas, showing that both areas are considered to be well served and has addressed the concerns related to urbanized areas. Hall has also provided basic criteria demonstrating that Fort Meade meets the Commission's requirements for community status and is entitled to be considered for a first local transmission service. A Commission analysis confirms Hall's comments with regard to gain and loss areas, proximity to urbanized areas and community criteria.

4. Channel 252C2 can be allotted to Fort Meade, Florida, in compliance with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules at Hall's proposed site.<sup>3</sup> Hall's proposed site is 6.3 kilometers (3.9 miles) south of the community of Fort Meade. We shall not accept competing expressions of interest in the use of Channel 252C2 at

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<sup>3</sup> The coordinates for Channel 252C2 at Fort Meade are 27-41-45 and 81-48-49.

Fort Meade or require Hall to demonstrate the availability of an additional equivalent class channel at Fort Meade.

5. In view of the fact that the proposed allotment would provide a first local FM service to Fort Meade, Florida, the Commission believes it would serve the public interest to solicit comments to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules, for the communities listed below, to read as follows:

Community	Channel No.	
	Present	Proposed
Arcadia, Florida	252C2	----
Fort Meade, Florida	----	252C2

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **September 8, 1997**, and reply comments on or before **September 23, 1997**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Thomas Schattenfield  
 Susan A. Marshall  
 Arent Fox Kintner Plotkin & Kahn  
 1050 Connecticut Avenue, N. W.  
 Washington, D. C. 20036-5339

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review

by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

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**APPENDIX**

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission, Washington, D, C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D. C.